

M E M O R A N D U M

March 20, 2003

To: Interested Parties

From: Jeanne Peterson
Executive Director

Re: Regulatory Changes Adopted at March 19, 2003 Meeting

Attached you will find language that deals with two section of the tax credit regulations. Both of these were adopted by the Committee at its meeting yesterday.

The first is simply a re-ordering of the language contained in Section 10327(c)(2) regarding permissible developer fees. After its adoption on January 29, 2003, several people indicated that the way the paragraphs were written led to some confusion. In an attempt to lessen any confusion, the section has been re-written so that subsection (A) deals with 9% credit applicants (and those tax-exempt applicants also applying for state tax credit), while subsection (B) deals with tax-exempt bond applicants applying under Section 10326 of the regulations.

The second section of the regulations that changed is section 10325(d)(2) pertaining to the Geographic Area selection. The changes here are highlighted, with the new language in **bold**, and the deleted language shown by strikeovers.

Two changes occurred here. First, the Committee has committed to funding one project per round per geographic area, so long as the amounts requested and awarded fit within the amounts delineated in the regulation.

Second, for purposes of determining how much credit is available and can be applied for in the geographic areas, the formula for the first round, for those projects that can apply for state credit because they are not in a QCT or DDA, has remained the same; namely, it is based solely on the amount of federal credit available. For all other, that is for those located in DDAs or QCTs, the number is now calculated on the sum of the following: twice (2.5 times for the 3 smallest geographic areas) the ten year federal credit available, plus state credit available (for the first funding round, this amount has been estimated at \$20 million after funding of the set-asides), and then divided by 10 to "annualize" it. These figures are posted elsewhere on our website.

Section 10327(c)(2) Developer fee.

- (A) For 9% competitive applications applying under section 10325 of these regulations, and for applications applying under 10326 of these regulations that also apply for state tax credit, the following limitations shall apply:
 - (i) the maximum developer fee that may be included in total project costs is the lesser of 15% of the project's eligible basis, or two million (\$2,000,000) dollars:
 - (ii) the maximum developer fee that may be included in eligible basis is the lesser of fifteen (15%) percent of unadjusted eligible construction related basis and five (5%) percent of eligible acquisition basis (notwithstanding the project accountant's final determinations according to generally accepted accounting principles), or one million two hundred thousand (\$1,200,000) dollars, except for projects receiving a waiver of project size limitations under section 10325(f)(9)(C) of these regulations, in which case the following amounts shall be substituted for the \$1,200,000 amount listed above: \$1,440,000 for projects having between 201 and 250 units, \$1,500,000 for projects having between 251 and 300 units, and \$1,560,000 for projects having more than 300 units.
- (B) For projects applying under Section 10326 of these regulations that have received a bond allocation and/or a tax credit reservation prior to March 1, 2003, the limitations enumerated in subsection (A) above shall apply. For projects applying under Section 10326 of these regulations that are not applying for state tax credit and that are awarded tax exempt bond allocation by the California Debt Limit Allocation Committee and/or a reservation of tax credit by the California Tax Credit Allocation Committee for the first time after February 2003, the limitation on developer fee that may be included in eligible basis shall be the lesser of fifteen (15%) percent or two million five hundred thousand (\$2,500,000) dollars. For projects applying under Section 10326 of these regulations, any developer fee greater than the amount limited in qualified basis cannot be paid from permanent sources nor paid prior to permanent closing.
- (C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis.

Section 10325(d)(2) Geographic Areas selection. Credit remaining following reservations to all set-asides shall be reserved to projects within the geographic areas, beginning with the geographic area having the smallest apportionment, and proceeding upward according to size in the first funding round and in reverse order in the second funding round, filling each geographic area's apportionment and assuring that each geographic area receives funding for at least one project in each funding round to the extent that **no more than the amounts below are requested.** ~~is at least 50% of the federal credit requested available in that geographic area~~ or that the project is a large acquisition/rehabilitation project that has received a waiver under Section 10325(e)(9) of these regulations. **The amount of funds that can be applied for and reserved shall be determined by multiplying the amount of federal credit available after funding of the set-asides, first by ten, then by twice the percentage ascribed to the geographic area in the regulations (2.5 times for those geographic areas having less than 3% apportionment), and finally, adding to that figure the percent of state credit available that is ascribed to the geographic area in the regulations. In the first funding round of 2003, for projects eligible to apply for state credit because of their location, (for example, those not in DDAs or QCTs) the limitation shall be calculated solely on the federal credit available to the geographic area and shall not take into consideration the state credit amount requested. In the second funding round, the limitation for all applications shall be calculated as though the preceding sentence did not exist.**

- (A) In each funding round, the highest scoring project will be awarded a reservation, provided that **it has applied for no more credit than is described in the above paragraph.** ~~at least 50% of the total federal Credit (40%) in the case of geographic areas with less than 3% apportionment) for which the project has applied and is eligible is available to be reserved or that the project is a large acquisition/rehabilitation project that has received a waiver under Section 10325(e)(9), in which case the next sentence shall not apply.~~ Should less than 50% (or 40%) in the case of the counties mentioned above) of the **sum of the ten year federal Credit and the state credit** for which the next project is eligible remain available in the geographic area, no further awards will be made in the geographic area. The Committee will not fund a lower ranking project in this case. Any overages that occur in a geographic region in a funding round may be taken from the three percent holdback of funds to the extent they are available, or may, at the discretion of the Executive Director, reduce, by that overage amount, the credit available to that geographic region in the next funding round.

The Committee may determine that, under the unique circumstances of the funding round and in consideration of the relative scores and ranking of the proposed projects, that all applicants scores are too low to warrant a reservation of credit pursuant to section 10325(c) of these regulations.

(B) To the extent that there is a positive balance remaining in a geographic area after the first funding round, such amount will be added to the amount available in that geographic area in the second round, ~~and to the extent that there is a negative balance remaining in a geographic area after the first funding round, that amount will be~~

~~subtracted from the amount available to the geographic area in the second funding round.~~
Further, to the extent that, at the close of the second funding round there are still funds available in any geographic apportionment, such Credit will be added together from all geographic areas and will then be awarded to the highest scoring project in the geographic area having the greatest disparity between the percentage goals for the areas, and the actual percentage reserved for that area.